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Marilynn Eaton
Proc. II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-187471

DATE: November 15, 1976

MATTER OF: Del-Co Construction, Inc.

DIGEST:

Cancellation of IFB on ground that all bids received are unreasonable constitutes adverse agency action; protest filed more than 10 working days thereafter is untimely and will not be considered on merits.

On May 19, 1976, the Air Force issued invitation for bids (IFB) No. F34650-76-09168, covering air conditioning of the hospital kitchen at Tinker Air Force Base, Oklahoma. Bid opening date was June 8, 1976. By letter of July 9, 1976, the contracting officer advised the protester, Del-Co Construction, Inc. (Del-Co), that of the two bids received, its low bid of \$86,400 was considered unreasonable in view of the Government's estimate of \$50,000 for the project. Consequently, Del-Co was advised that the solicitation was canceled.

On August 27, 1976, the required notice of readvertisement was published in Commerce Business Daily (CBD), and on August 30, 1976, a second IFB was issued bearing the same number and containing only minor changes in specifications. The record shows that Del-Co picked up a copy of the reissued IFB on September 3, 1976.

Del-Co orally protested the resolicitation to the contracting officer on September 16, 1976; this protest was denied orally on September 20, 1976. Formal protest by mailgram was delivered to the Air Force on September 21, shortly before bid opening on that day, and was received in the Office on September 22, 1976. On September 30, 1976, the contract was awarded to Patterson Roofing and Sheet Metal Company for \$67,618.

Del-Co contends that the original IFB should not have been canceled, and that readvertisement and award of a contract under the second IFB is improper since it prejudices Del-Co's previous bid and violates the integrity of the competitive bidding system.

The threshold question is whether Del-Co's protest is timely. For the following reasons, we find that it is not. Our Bid Protest Procedures, 4 C.F.R. § 20.2 (1975), read in pertinent part:

"(a) * * * If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (b) * * *.

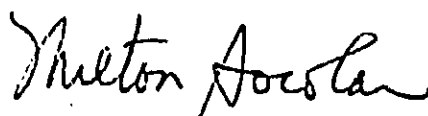
"(b)(2) * * * bid protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier."

We believe that Del-Co's sole basis of protest is the determination by the contracting officer that its bid price was unreasonable, resulting in cancellation of the original IFB. Armed Services Procurement Regulation § 2-404.1 (b) (vi) permits such action when the contracting officer determines that all otherwise acceptable bids received are at unreasonable prices.

Since Del-Co believed its bid to be reasonable, the cancellation of the IFB constituted adverse agency action which Del-Co had knowledge of upon receipt of the July 9, 1976, letter from the Air Force. To be considered timely under our Bid Protest Procedures, Del-Co should have protested within 10 working days thereafter. In our opinion, Del-Co's protest of the resolicitation is essentially a restatement of the position that its bid was reasonable.

Since Del-Co's protest to the Air Force contracting officer was not made until September 16, 1976, it is untimely; any subsequent protest to this Office cannot be considered. To hold otherwise would contravene the provisions of our Bid Protest Procedures, which were adopted to permit resolution of protests in time for effective remedial action when circumstances warrant. See 52 Comp. Gen. 20, 22 (1972); Homemaker Health Aide Service of the National Capital Area, Inc., B-185924, March 1, 1976, 76-1 CPD 142.

Therefore, the protest is untimely and will not be considered on the merits.

for 
Paul G. Dembling
General Counsel